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NOT TO BE PUBLISHED IN OFFICIAL REPORTS

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FOURTH APPELLATE DISTRICT

DIVISION THREE

ANTHONY NGUYEN,

Plaintiff and Appellant,

v.

THIEN KINH TRAN, et al.,

Defendants and Respondents.

G055097, consol. w/ G055130

(Super. Ct. No. 30-2014-00729544)

O P I N I O N

Appeal from orders of the Superior Court of Orange County, Gregory H. Lewis and Robert J. Moss, Judges; and James E. Loveder, Temporary Judge (pursuant to Cal. Const., art. VI § 21). Affirmed.

Anthony Nguyen, in pro. per., for Plaintiff and Appellant.

Law Offices of Andrew D. Weiss and Andrew D. Weiss for Defendants and Respondents, Thien Kinh Tran, Thu Hien Thi Nguyen, and Sunny Duong.

No appearance for Defendant and Respondent, Vanessa Moreno.

* * *

Anthony Nguyen appeals from five postjudgment orders following his voluntary dismissal of his lawsuit against defendants Thien Kinh Tran, Thu Hien Thi Nguyen, and Sunny Duong, among others. Litigation continued for more than a year after Nguyen's dismissal as he resisted the costs motion for $2,337.89 filed by defendants, Thien Kinh Tran, Thu Hien Thi Nguyen, and Sunny Duong (hereafter, respondents), including his attempt to remove the matter to federal court. The postdismissal proceedings generated the orders Nguyen now challenges, including a judicial reassignment that Nguyen failed to thwart with a disqualification motion (Code Civ. Proc., § 170.6; all further statutory references are to this code), and Nguyen's eventual designation as a vexatious litigant (§ 391). This appeal consolidates Nguyen's challenge in one notice of appeal (G055097) to two of the postjudgment orders with his challenge to three other postjudgment orders specified in another notice of appeal (G055130); all five of the orders arose in the same postdismissal proceedings.

Meanwhile, this appeal is one of nearly a dozen appeals Nguyen recently has filed, including eight arising from the underlying restraining order that he collaterally attacked in this lawsuit,[1] before dismissing it, and two other appellate challenges (G053946, G054555) to a separate restraining order. Nguyen's four surviving appeals—including this consolidated appeal—were argued together.

As to the five postdismissal orders Nguyen challenges in this matter, the governing standard of review on appeal requires us to presume the orders are correct

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[1] Nguyen's eight appeals stemming from the original restraining order are: G051373, G051378, G054734, G054876, G055022, G055078, G055427, and G055428. All but two of these (G055022 and G055078) have been dismissed for various reasons, including: (1) untimeliness, (2) Nguyen's failure to meet the prefiling requirement once he was designated a vexatious litigant (G055428), and (3) for, as this court's order in G055428 observed, lack of cognizable claims on appeal where Nguyen merely asserted "rambling unintelligible accusations . . . of 'fraud and criminal activity' by respondents and their attorney."

unless Nguyen meets his burden to demonstrate error. (*Denham v. Superior Court* (1970) 2 Cal.3d 557, 564 (*Denham*).) Despite listing the orders in his notices of appeal, Nguyen fails to mention three of them in his appellate brief, and he provides no compelling reason to overturn the other two orders. We therefore affirm the trial court's rulings.

FACTUAL AND PROCEDURAL BACKGROUND

Following a different trial court's entry of a restraining order against Nguyen in a harassment proceeding involving a respondent in this matter, Thien Kinh Tran, Nguyen initiated a new lawsuit by filing the underlying complaint in this case against Tran and others. Nguyen's complaint asserted causes of action for (1) assault and battery, (2) intentional misrepresentation and defamation, (3) abuse of process and malicious prosecution, (4) intentional infliction of emotional distress, (5) negligence, and (6) breach of contract. Nguyen premised his breach of contract claim on respondent Thu Hien Thi Nguyen's alleged breach of her promise to marry him, a cause of action California abolished in 1939. (Civ. Code, § 43.5(d); *Askew v. Askew* (1994) 22 Cal.App.4th 942, 946.)

Respondents filed a series of motions, including motions for judgment on the pleadings, to deem requests for admission admitted, to compel further responses to interrogatories, and to declare Nguyen a vexatious litigant. Nguyen elected to dismiss his complaint rather than respond to the motions, and respondents sought their combined costs of $2,337.89 as the prevailing parties. The trial court entered an order awarding respondents these costs in November 2016. The ensuing proceedings that constitute the bulk of the record on appeal involve Nguyen's attempts to avoid the cost award, comprising more than 3,500 pages of the 5,000 pages Nguyen designated on appeal. Nguyen does not cite the record a single time in his appellate briefing to support any of his claims or arguments.

Nguyen's appellate brief is virtually identical to the briefs he filed in his other recent appeals (G055022 and G055078). In it he attempts to challenge the original June 2014 restraining order entered against him, despite the fact that his appeal in this matter involves a different proceeding altogether, namely, the separate complaint he filed and the ensuing cost order and other orders. As we observed in G055022 and G055078, those appeals were themselves rehashed appeals of Nguyen's earlier attempts in other appeals (G051373, G051378) to challenge the June 2014 restraining order, and a panel of this court dismissed those initial appeals in G051373 and G051378 as untimely. In any event, the notices of appeal Nguyen has filed in this consolidated matter designate five particular trial court orders—all entered subsequent to Nguyen's dismissal of his complaint—as the subject of his appeal in this matter. We discuss below the procedural history for those five orders and examine the merits of Nguyen's challenges to each order.

DISCUSSION

Our appellate jurisdiction is limited by rule to the judgment or orders specified in the appellant's notice of appeal. (Cal. Rules of Court, rule 8.100; *Dakota Payphone, LLC v. Alcaraz* (2011) 192 Cal.App.4th 493, 504 (*Dakota Payphone*).) The five orders Nguyen has appealed in this matter, which he identifies in his notices of appeal solely by their dates, are orders entered on: May 31, 2017; June 12, 2017; June 14, 2017; June 19, 2017; and June 20, 2017. The rules of law applicable to this appeal are the same as those discussed in a inrinboxelated appeal (G055022). We therefore incorporate that discussion by reference herein.

We now turn to the specific challenges Nguyen asserts in his brief to the trial court's rulings, limiting our review to the orders Nguyen identifies in the two notices of appeal he filed (*Dakota Payphone*, *supra*, 192 Cal.App.4th at p. 504), which we consolidated by order into a single appeal.

(1) Orders Entered on May 31, 2017, June 19, 2017, and June 20, 2017

Nguyen's notices of appeal designate three orders that he fails to challenge in any way in his appellate brief. The trial court entered those orders on, respectively, May 31, 2017, June 19, 2017, and June 20, 2017. The May 31, 2017 order denied Nguyen's peremptory attempt to disqualify Judge Gregory Lewis under section 170.6. By statute, such denials are not appealable and may only be reviewed by a petition for a writ of mandate filed within 10 days after notice of entry of the ruling. (§ 170.3, subd. (d).) Nguyen failed to file a writ petition, timely or otherwise.

The June 19, 2017 order denied Nguyen's motion under section 473 to vacate the $2,337.89 cost order, dismiss Nguyen's counsel, and vacate his voluntary dismissal of the action. The trial court in its order denying the motion explained that Nguyen already had substituted new counsel and that Nguyen failed to establish the requisite mistake, inadvertence, surprise, or excusable neglect necessary under section 473 to support his motion to vacate the cost order and the dismissal. Nguyen fails to include in the record—or if he includes it, fails to cite—his moving papers. The same is true regarding his application for a strike order that the trial court denied the next day. The court's June 20, 2017 order denied Nguyen's ex parte application to strike allegedly unserved pleadings. We are unable to locate this ex parte application in the voluminous record on appeal. "'Failure to provide an adequate record on an issue requires that the issue be resolved against [appellant].'" (*Foust v. San Jose Construction Co., Inc.* (2011) 198 Cal.App.4th 181, 187.) "'The absence of a record concerning what actually occurred at the trial precludes a determination that the trial court [erred].'" (*Oliveira v. Kiesler* (2012) 206 Cal.App.4th 1349, 1362.)

Additionally, even treating Nguyen's designation of the May 31, 2017 order in his notice of appeal as a petition for a writ (albeit still untimely), and even assuming the June 19 and June 20, 2017 orders are appealable (which Nguyen fails to establish), his appellate challenge to these orders fails because he provides no reasoned

argument for reversing the orders. Indeed, he fails to mention the orders in his brief. Our limited role on appeal permits reversal of a judgment or order only when the appellant meets his or her burden to show prejudicial legal error. (Cal. Const., art. VI, § 13; *Denham*, *supra*, 2 Cal.3d at p. 566.) "An appellant must affirmatively demonstrate error through reasoned argument, citation to the appellate record, and discussion of legal authority." (*Bullock v. Philip Morris USA, Inc*. (2008) 159 Cal.App.4th 655, 685.) It is not enough to raise an issue or a ruling for general review.

"'"'When an appellant fails to raise a point, or asserts it but fails to support it with reasoned argument and citations to authority, we treat the point as waived."' [Citation.] 'We are not bound to develop appellants' arguments for them.'" (*Cahill v. San Diego Gas & Electric Co*. (2011) 194 Cal.App.4th 939, 956 (*Cahill*).) These principles apply equally to self-represented parties. (*Nwosu v. Uba* (2004) 122 Cal.App.4th 1229, 1246.) We find no merit in Nguyen's challenge to the orders the trial court entered on May 31, 2017, June 19, 2017, and June 20, 2017.

(2) Orders Entered on June 12, 2017 and June 14, 2017

Nguyen designated the trial court's June 12, 2017 order for appeal in his notice of appeal in G055097, and the court's June 14, 2017 order in his notice of appeal in G055130. The June 12, 2017 minute order included several rulings. Specifically, the court's order documents the following findings: (1) that Nguyen removed a related case to the federal district court for the fourth time, but not this underlying case; (2) that Nguyen failed to execute the parties' agreement to settle the $2,337.89 cost award for $1,000 by attempting to add conditions to the settlement; (3) a denial of Nguyen's oral request at the hearing to continue the hearing; (4) a finding Nguyen is a vexatious litigant, with twice the requisite five litigation actions determined adversely against him in the preceding seven-year period. The June 14, 2017 order that Nguyen appeals is the court's vexatious litigant prefiling order, entered on the Judicial Counsel form order adopted for

mandatory use, documenting that Nguyen is a vexatious litigant subject to the pre-filing requirements set forth in Section 391.7 of the Code of Civil Procedure.

As to these two June 2017 orders, Nguyen's brief addresses, as best we can discern, only the vexatious litigant ruling by asserting in a heading that the order lacks substantial evidence to support it. Even if we overlook the facts that a party may not argue his or her case solely in the headings or table of contents, and a failure to support a claim for reversal with reasoned argument forfeits the claim (*Cahill*, *supra*, 194 Cal.App.4th at p. 956), Nguyen's substantial evidence challenge fails. Nguyen failed to designate a reporter's transcript of the testimony at the vexatious litigant hearing. Consequently, his challenge in a heading asserting a lack of evidence necessarily fails. The standards governing appeal are well-established, including that "omission of the reporter's transcript precludes appellant from raising any evidentiary issues on appeal." (*Hodges v. Mark* (1996) 49 Cal.App.4th 651, 657.)

By foregoing a reporter's transcript, Nguyen effectively elected to proceed solely based on the clerk's transcript (Cal. Rules of Court, rules 8.121, 8.122), which we treat as an appeal on the "judgment roll." (*Allen v. Toten* (1985) 172 Cal.App.3d 1079, 1082.) For judgment roll appeals, we must presume the trial court heard substantial evidence to support its findings. (*Ehrler v. Ehrler* (1981) 126 Cal.App.3d 147, 154.) These rules of appellate procedure apply equally to self-represented parties. (*Rappleyea v. Campbell* (1994) 8 Cal.4th 975, 984-985; *Leslie v. Board of Medical Quality Assurance* (1991) 234 Cal.App.3d 117, 121.) On a judgment roll appeal, our review is limited to determining whether any error appears on the face of the record. (*National Secretarial Service, Inc. v. Froehlich* (1989) 210 Cal.App.3d 510, 521.)

We discern no such error here. Respondents exceeded the necessary threshold to demonstrate Nguyen is a vexatious litigant, introducing evidence showing he "commenced, prosecuted, or maintained in propria persona at least five litigations" that terminated adversely against him in the preceding seven-year period. (§ 391,

subd. (b)(1)), including voluntary dismissals. (*Garcia v. Lacey* (2014) 231 Cal.App.4th 402, 406-407.) The trial court's order documents 10 such adverse terminations, twice the required number. Substantial evidence therefore supports the court's vexatious litigant finding.

DISPOSITION

Nguyen's appellate challenges to the trial court orders entered on: (1) May 31, 2017; (2) June 12, 2017; (3) June 14, 2017; (4) June 19, 2017; and (5) June 20, 2017 are without merit. We therefore affirm the orders. Respondents are entitled to their costs on appeal.

GOETHALS, J.

WE CONCUR:

FYBEL, ACTING P. J.

THOMPSON, J.